IN THE HIGH COURT OF BOMBAY AT GOA

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.26 OF 2001.

Shri Shashikant G. Kambli,
son of Shri Gopal S. Kambli,
Civil Contractor,
32 years of age,
residing at House no.206,
Ela,Old Goa,Goa..... APPLICANT

VERSUS

1. The Chief Engineer,
   Public Works Department,
   Altinho,Panaji,Goa;

2. Mapusa Municipal Council,
   through the Chief Officer,
   Mapusa, Goa..... RESPONDENTS.

Shri Vijay Mendes, Advocate for the Applicant.

Shri A.N.S. Nadkarni, Advocate General, with Shri M.J. Rane, Addl. Government Advocate,for the Respondent No.1.

Shri S.D. Padiyar, Advocate for the Respondent No.2.

CORAM : V.C. DAGA,J.

DATED : JUNE 7, 2002.

ORAL ORDER

Heard the parties. Perused record.

2. This is an Application under Section 11(6) of the Arbitration and Conciliation Act, 1996,('the Act' for short) seeking appointment of an Arbitrator and order of reference to arbitrator of the disputes enlisted in Exhibit 'B' annexed to the

Application.

3. The Applicant herein is a civil contractor and registered with the Public Works Department, Government of Goa, as a building contractor. A contract was awarded to him by Respondent No.2. In pursuance thereof work order for supply of precast concrete blocks was given to him vide Work Order dated 21st October, 1998. A formal agreement, therefore, was executed between the Applicant and Respondent No.2. In the said agreement under Clause 25, it was agreed that all questions and disputes arising between the parties relating to the contract shall be referable to the sole arbitration of the person referred in the said clause, which reads as under:-

> "CLAUSE 25. Except where otherwise provided in the contract all questions and disputed relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions orders or these conditions or otherwise concerning the work, or the execution or failure to execute

the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Chief Engineer Goa, Daman and Diu, Public Works Department, in charge of the work at the time of dispute or if there be no Chief Engineer, the administrative head of the said Goa, Daman and Diu Public Works Department at the time of such appointment. It will be no objection to any such appointment that the arbitrator so appointed is a Government servant, that he had to deal with the matters to which the contract relates and that in the course of his duties as Government Servant he had expressed views on all or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reasons, such Chief Engineer or administrative head as aforesaid at the time of such transfer, vacation office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Chief Engineer or administrative head of Goa, Daman and Diu, P.W.D., as aforesaid should act as arbitrator and if for any reasons, that is not possible, the matter is not to be referred to arbitration at all. In all cases where the amount of the claim in dispute is Rs.50,000/- (Rupees fifty thousand) and above, the

arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the Arbitration Act,1940, or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

It is also a term of the contract that if the contractor (s) do/does not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the govt., that the bills is ready for payment, the claim of the contractor(s) will be deemed to have been waived and absolutely barred and the Govt. shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitrator(s) may from time to time with consent of the parties enlarge the time, for making and Publishing the award."

5. It is the contention of the Applicant that disputes and differences have arisen between the parties, namely, the Applicant and the Respondent No.2 in so far as the matter touching the contract.

6. The Applicant contended that by letter dated 11th February,2000, he submitted his claim to the Respondent No.2 and called upon the Respondent No.2 to finalise the said claim failing further called upon them to refer the said dispute to the Arbitrator. Since there was no response from the Respondent No.2, the Applicant by letter dated 28th February,2000 requested the Respondent No.1 to appoint an Arbitrator within thirty days from the date of receipt of the said letter. Copy of the said letter is produced on record along with the text of the arbitration clause. However, Respondent No.1 failed and neglected to appoint an Arbitrator in exercise of power under Clause 25 of the agreement/contract despite the existence of differences and disputes to which the agreement applies. In this view of the matter, the Applicant was left with no other alternative but to invoke the jurisdiction of this Court under Section 11(6) of the Act.

7. On being served, the Respondents appeared. There appears to be no serious contest so far as this prayer is concerned. The parties to this Petition have jointly suggested the name of Advocate Jayant P. Mulgaonkar to be the sole Arbitrator. Accordingly, by consent of parties Shri

Jayant Mulgaonkar is appointed as the sole Arbitrator to arbitrate dispute between Applicant and Respondent No.2. Accordingly, the disputes between the Applicant and Respondent No.2 listed in Exhibit 'B' stand referred to the sole Arbitrator Shri Jayant Mulgaonkar for adjudication in accordance with law. Office to communicate a copy of this Order to Shri Jayant Mulgaonkar, Advocate, Goa for his information and doing the needful in the matter.

8. In the result, the Application is allowed in exercise of power under Section 11(6) of the Act and order is made absolute in terms of the prayer clause with no order as to costs.

V.C. DAGA,J.

ac.